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No. 80-2124

# In the Supreme Court of the United States

OCTOBER TERM, 1980

AMBASSADOR COLLEGE, INC., WORLDWIDE CHURCH OF GOD, INC., and THE WORLD TOMORROW,

*Petitioners,*

vs.

GEORGE DANIEL McELROY,

*Respondent.*

## BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

Under Wisconsin law that precludes the exercise of an undue influence to obtain property, may such common law be circumvented by shrouding one's impermissible conduct with the immunity of the First Amendment so as to obtain an absolute privilege?

More specifically:

1. Where a jury, Trial Court, and Court of Appeals for the State of Wisconsin, District III, have all unanimously held that the 1969 deed reserving a life estate to respondent clearly resulted from undue influence on the part of the petitioners such that their will was substituted for that of respondent causing him to deed to the petitioner Ambassador College his only valuable asset in the world, is there any real First Amendment question raised on such record?

2. Where a civil suit in a State Court revolves simply around factual matters related solely to a claim of undue influence, which claim is not premised upon doctrinal attack against a church, can such church or petitioners claim an absolute right to engage in any improper or unlawful conduct in the soliciting of funds, citing First Amendment protection?

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**GEORGE DANIEL McELROY,**

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## BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

### STATEMENT OF THE CASE

This case involves undue influence by petitioners which led respondent to convey a remainder in his farm. That occurred in 1969. Respondent was caused to substitute their judgment for his and wound up deeding the remainder interest in his only valuable asset to the Ambassador College. A trial was had on the theory of undue influence. A jury returned a verdict favorable to McElroy in August, 1979. Judgment was granted pursuant to the verdict voiding that deed, and such judgment was appealed to the Court of Appeals and later affirmed. (See Appendix "A": Court of Appeals' Decision.)

George Daniel McElroy is a poor, old farmer from Barron County, Wisconsin. He is unsophisticated and uneducated. He completed only the seventh grade in school and had no other formal training (Trial Transcript, ("T"), P. 4). After seventh grade, McElroy left school to run the family farm (T., P. 4). McElroy continued to farm in the 1930's and also drove truck during two periods of his adult life. During World War II he served in a munitions plant for a year.

McElroy had married and was the father of three children. In 1960, in Minnesota, divorce proceedings were instituted by his wife. A period of great emotional tumult ensued. McElroy was in a state of shock over this. In 1961, divorced, he moved back to Barron County, Wisconsin, and has resided there ever since (T., P. 8).

Seeking order in his life, McElroy began to listen to radio programs, including those of the petitioner organizations, all of which are California corporations (T., P. 9). First contact with petitioners came in 1962 or 1963.

Following contact with the petitioners, McElroy began to contribute money to the petitioners. Prior to being baptized and up until 1970, he was actively involved in a correspondence course being offered by petitioners (T., Pp. 12-13, See Exhibit "1" of the Trial Record).

McElroy attended services in the Twin Cities area. In 1966, representatives of petitioners visited him (T., Pp. 18-20). McElroy was encouraged to move from his dairy farm into the City to be nearer to the church (T., P. 20). Further, McElroy was told to reduce the size of his herd so that he could conform to church guidelines on milking cows on the Sabbath (T., Pages 18-20). Consistent with the directive from petitioners, McElroy cut the size of his herd from thirty (30) to fifteen (15) or sixteen (16) cows, with only twelve (12) milking cows (T., Pp. 18-20).

McElroy fulfilled further conditions precedent to becoming a member of the petitioner organizations and was baptized in June, 1967 (T., P. 18). Thereafter, McElroy continued making relatively substantial cash contributions. (See Exhibits 24-26, Trial Record, McElroy's income tax returns.) Furthermore, McElroy dutifully followed the tithing program set forth by the petitioners wherein three (3) tithes were sought. Each was to represent ten (10) percent of the net income for a farmer (T., P. 17). In this time (1960's), McElroy contributed $7,000.00 to $8,000.00 to petitioners (T., Pp. 54-55, See Exhibits 17 and 18, Trial Record). McElroy attended the church services every Saturday in the Twin Cities area and annually attended the Feast of the Tabernacles (T., Pp. 29-30).

In October, 1969, McElroy attended the Feast of the Tabernacles at the Ozarks, Missouri (T., P. 30). Herbert Armstrong, founder of the Worldwide Church of God, made a presentation to members in attendance that Wills might be drafted to benefit petitioners, particularly the Ambassador College. That entity is the teaching arm for petitioner organizations (T., Pp. 32-33, 113). In attendance at the Festival that October, 1969, was Attorney Ralph K. Helge, an attorney on behalf of petitioners. Referral was made by Armstrong to Attorney Helge who was there to assist and provide basic Will information for bequests to the petitioners. Attorney Helge was and is a full-time employee of the petitioner organizations (T., P. 175). McElroy made contact with Helge at the conference, and Helge retained his name and thereafter forwarded significant amounts of correspondence to McElroy (T., Pp. 33-34).

There then ensued significant contact between petitioners and respondent from October 23, 1969, until December 15, 1969—the date when the remainder interest was con-

veyed by respondent. These contacts and dates will be treated *seriatim*.

October 23, 1969: Lawyer Helge, attorney for petitioners, forwarded letter, sample Will, and basic Will information to McElroy, also providing procedures to bypass probate, and a questionnaire eliciting basic Will information (T., P. 34, Exhibit 3, Trial Record).

November 1, 1969: Will was executed by McElroy leaving everything to the Ambassador College; Will signed at the request of Lawyer Helge; Will virtually identical to the sample Will forwarded October 23, 1969, by petitioners' lawyer, the only difference being name changes regarding testator and executors, although executors were proposed by petitioners through their lawyer, Ralph Helge; McElroy never met or communicated with the executors either before or after November 1, 1969 (T., Pp. 35-36, 179, 115).

November 5, 1969: Two more letters sent by Attorney Helge, one representing a "thank you" letter on the Will and the other providing an inventory which McElroy had to fill out so that petitioners would be apprised of all of McElroy's holdings (T., Pp. 38-39, Exhibits 5 and 6, Trial Record).

At Attorney Helge's request, McElroy did inventory all of his property, disclosing all of his assets, including his real property—a 160-acre farm in Barron County, Wisconsin (T., Pp. 39-40, Exhibit 7, Trial Record). It is undisputed that such real estate represented McElroy's only significant asset.

November 6, 1969: Letter from Attorney Helge to McElroy outlining basic procedures to bypass probate containing Declaration of Trust document with respondent's name on it (T., Pp. 40-42, Exhibit 8, Trial Record).

Shortly thereafter, a selection or option letter regarding handling of real estate was forwarded to McElroy (Exhibit 9, Trial Record). A Deed Reserving Life Estate was one of the options available in the giving of real estate. McElroy believed that the Declaration of Trust, which was cancellable, applied to the real estate selection he made and returned (T., Pp. 41-44).

Attorney Helge wrote again on November 7, 1969, advising as to donations regarding securities. That was followed by a securities election letter for McElroy to elect the appropriate method of giving his securities to the Ambassador College (T., Pp. 45-46, Exhibits 10 and 11). An inventory relative to securities was directed to McElroy after that (T., P. 46, Exhibit 12, Trial Record). Attorney Helge wrote again on November 10, 1969, providing more documentation on gifts to the petitioners. Again, a copy of the Declaration of Trust was forwarded (T., P. 46, Exhibit 13, Trial Record).

Confused by the vast array of literature from the petitioners, McElroy wrote to Attorney Helge on December 4, 1969, looking for assistance. By letter dated December 9, 1969, Attorney Helge responded, telling McElroy to seek help in his locality (T., Pp. 48-50, Exhibits 14 and 15, Trial Record).

Yet those in the Worldwide Church of God had been instructed that if they had any questions of a legal or financial nature, they were to be answered within the church (T., Pp. 192-193, 201-202).

Then, Attorney Helge, on behalf of petitioners, drafted and forwarded to McElroy the Deed Reserving Life Estate. McElroy signed this on December 15, 1969. Legal assistance from anybody outside the church was not sought by McElroy before signing the deed.

McElroy testified he believed the Declaration of Trust which had been provided by Attorney Helge meant that the deed was revocable, much like a Will. That trust document contained a cancellation clause making it revocable at any time at the grantor's request. In addition, McElroy felt that the Declaration of Trust had the added advantage of providing for an immediate income tax savings. Such savings were not great in light of the extremely modest income that McElroy had (See Exhibits 24-26, Trial Record).

McElroy continued to be involved in the church from 1969 until 1972. In early 1973, McElroy wrote to Attorney Helge trying to cancel the Declaration of Trust and seeking a return of the remainder interest in the property (Appendix B, Letter of McElroy to Attorney Helge dated February 8, 1973; also Exhibit 20, Trial Record). Letters addressed to Attorney Helge had been drafted by William Steventon (T., P. 61). In response, Attorney Helge stated that the deed would not be returned, and it was at this point that McElroy first found that the Declaration of Trust was not to apply to the deed even though he was induced to believe that it so applied.

McElroy testified that his thinking had been guided, indeed, programmed, by petitioners. In effect, petitioners' judgment through Attorney Helge was being substituted for his own (T., Pp. 44, 45, 196). Disassociated from the church in 1973, McElroy became aware for the first time that undue advantage had been taken of him; and he then sought return of the remainder interest in the property through the instant civil action.

## ARGUMENT

### I.

### THE COURT OF APPEALS PROPERLY STATED THAT NO VALID FIRST AMENDMENT ISSUE WAS PRESENTED IN THE LAWSUIT BECAUSE THIS WAS A FACTUAL MATTER RELATED ONLY TO A CLAIM OF UNDUE INFLUENCE AND THE CLAIM WAS NOT PREMISED UPON A DOCTRINAL ATTACK.

McElroy believes that the First Amendment is being cited by the petitioners because they are groping hopelessly for an issue before the United States Supreme Court. Petitioners are trying to grant unto themselves an absolute privilege to do anything they like in soliciting funds. While petitioners are free to believe and espouse whatever they like, they are not free to *do* whatever they like; and their actions must be consistent with the law. Petitioners attempt to arrogate to themselves a place beyond the reach of the law; and, clearly, that is not the purpose of the First Amendment.

The only issue in the case is whether George Daniel McElroy was unduly influenced into giving the petitioners his property. Evidence of the undue influence was directed to petitioners' methods, particularly those of their lawyer, Helge, not to the content of their religious beliefs. This is consistent with the permissible scope of inquiry set forth in *United States* v. *Ballard,* 322 U.S. 78 (1944).

The Court of Appeals rightly determined that the four (4) elements necessary in an undue influence case in the State of Wisconsin had been proved. These are suscepti-

bility, opportunity to influence, disposition to influence, and coveted result. They were proved by the appropriate evidentiary standard—clear, convincing, and satisfactory evidence. The conduct appropriately relied upon by the Court of Appeals in stating that undue influence had been proved was that between October 23, 1969, and December 15, 1969. In that time, doctrinal disputes played no part in proving that the gifts to petitioners were obtained through undue influence.

Respondent, George Daniel McElroy, respectfully submits that no doctrinal attack issued here. The facts of the case are so clear that a doctrinal attack would only cloud the proof of the undue influence exercised by the petitioners in obtaining McElroy's property. What is attacked is that via reams of correspondence and solicitation, petitioners were able to get respondent to execute a Will in November of 1969 leaving everything to the Ambassador College. Thereafter, by means of the inventory that had been sent to the respondent, petitioners were able to find out that respondent had a valuable asset; namely, his real property in Barron County, Wisconsin; and then petitioners sought to insure that such property would be tied up permanently by means of a Deed Reserving Life Estate.

## II.

## NO FEDERAL QUESTION IS PRESENTED WARRANTING A REVIEW OF THE DECISIONS BELOW BECAUSE THE CASE WAS TRIED ACCORDING TO ESTABLISHED WISCONSIN LAW AND SUCH LAW AND THE VERDICT REACHED ARE CONSTITUTIONALLY PERMISSIBLE.

No adequate reason consistent with the grounds set forth in Rule 19, *U. S. Supreme Court Rules,* has been presented by petitioners to justify review of the matter. Peti-

tioners have sought to cloud the issue creating the straw man of the First Amendment to get some type of Federal question before the Court.

A review of the statement of the case indicates succinctly the factual underpinnings for the Court of Appeals' ruling. Close scrutiny of the time period November 1, 1969, through December 15, 1969, leads very strongly to the conclusion of undue influence without reference to any First Amendment claim on the part of the petitioners. Petitioners allege that absent egregious fraud or force, no claim of undue influence ever could be asserted against any religious entity. What petitioners appear to be arguing is that the evidence was not legally sufficient to sustain a finding of undue influence. That certainly is not a Federal question and is a State matter that is to be resolved by the State Courts.

Undue influence is an established Wisconsin theory. Its methods of proof are either proving the elements that the Wisconsin Supreme Court had said show undue influence: (1) susceptibility to undue influence, (2) opportunity to influence, (3) disposition to influence, and (4) coveted result; or proving the existence of: (1) a confidential relationship between the donor or testator and the favored beneficiary and (2) suspicious circumstances surrounding the making of the gift or will. *In re Estate of Kamesar,* 81 Wis. 2d 151, 158-159, 259 N.W.2d 233 (1977). McElroy's proof followed the first approach although the evidence at trial, particularly with respect to Attorney Helge's conduct, supported either position.

McElroy's proof of susceptibility was his lack of education and sophistication, his slavish following of all Attorney Helge's instructions in the critical period of mid October through December 15, 1969, his providing of a re-

mainder interest shortly after making a Will that left all to Ambassador College, and his general gullibility which was last witnessed by the trier of fact in August, 1979.

Petitioners had ample opportunity to influence McElroy as witness his contributions, his participation in a massive self study—some seven handwritten volumes long—his reduction of his dairy herd (his only livelihood), and his careful adherence to anything presented by the church or Attorney Helge. Petitioners had and took nearly every opportunity to influence McElroy so as to obtain an improper and unnatural favor.

Petitioners' disposition to influence McElroy is seen in their efforts to tie up McElroy's real property through the gift of the remainder interest. Not content with the Will that gave them everything, petitioners, through Attorney Helge, wanted an irrevocable lock on his land and obtained it through the guise of Declaration of Trust, income tax advantages (which could scarcely be less significant for a man of McElroy's most meager resources), and avoidance of probate costs. Attorney Helge sent substantial amounts of correspondence to induce and dispose McElroy to make the gift which was barely six weeks after Attorney Helge had elicited a Will that left all to petitioners and disinherited McElroy's three children.

Coveted result is plainly seen in the remainder interest which tied up McElroy's land immediately. What value is there to a life estate of a person age 68 should McElroy decide to sell it? Why were petitioners not able to wait until McElroy passed away before obtaining the land, lest they believe he would come to his senses and change his Will?

The Court of Appeals reviewed such elements and found that sufficient evidence was adduced as to each element to

sustain the finding of undue influence (App. A, P. 2). The appropriate degree of proof is clear, satisfactory, and convincing evidence. *In re Estate of Fechter*, 88 Wis. 2d 199, 277 N.W.2d 143 (1979). A finding by the Trial Court on the issue will not be upset on appeal unless it is against the great weight and clear preponderance of the evidence. On appeal, the Court examines the record, not for facts to support a finding the Trial Court did not make or could have made, but for facts to support the finding the Trial Court did make. *Estate of Hamm*, 67 Wis. 2d 279, 282, 227 N.W.2d 34 (1975).

Petitioners assert no constitutional defect in the jury instructions. The critical instruction pertains to undue influence:

> "To establish undue influence, four elements must be proved:
>
> 1. A person who is susceptible of being unduly influenced by the person charged with exercising undue influence;
>
> 2. The opportunity of the person charged to exercise such influence on the susceptible person to procure the improper favor;
>
> 3. A disposition on the part of the party charged, to influence unduly such susceptible person for the purpose of procuring an improper favor either for himself or another;
>
> 4. A result caused by, or the effect of such undue influence.
>
> Stated simply, it is susceptibility, opportunity to influence, disposition to influence and desired result by the defendants.
>
> The acts of influence may be as varied as human conduct. Influence becomes undue when it commands or compels the exercise of volition on the part of the

person subject to such influence so that the result is the accomplishment of the will or purpose of the one using influence rather than, in fact, the will or purpose of the Donor. The nature of the influence is in the form of mental persuasion or compulsion but not necessarily fear, which is the element of duress. The degree of persuasion which is unfair depends on a variety of circumstances. Both permissible influence and undue influence may induce a transaction. The distinction is whether the result was produced by influencing a freely exercised and competent judgment or by dominating the mind or emotions of the person susceptible to the influence.

You are, therefore, to consider the conduct of the plaintiff and the defendants in deciding whether undue influence was placed upon George Daniel McElroy. If you are satisfied by evidence which is clear and satisfactory that there was such undue influence, then you must answer question 1 'Yes.' "

That instruction is premised upon established Wisconsin case law. *Kuehn* v. *Kuehn*, 11 Wis. 2d 15, 104 N.W.2d 138 (1960). It sets forth an appropriate extrinsic and neutral test regarding analysis of methods used to compel action.

Whether undue influence was exercised by petitioners is a question of fact which has been resolved by a jury, and in turn endorsed by the Trial Court and later the Court of Appeals. Petitioners' attack, again couched in terms of the First Amendment, is simply a veiled sufficiency of the evidence approach. Where the law followed by the jury is constitutionally sound and the record is replete with evidence supporting the four elements of undue influence, further review of essentially factual disputes is unnecessary and clearly not reflective of any Federal question or constitutional issue worthy of review.

Much of the petition represents a constitutional essay on the First Amendment. Specific references are made to the record only to excoriate McElroy's counsel for something that he might have said in opening or closing. In the questions presented, petitioners have in great flowery language maintained McElroy's counsel tried this as a heresy trial. Beyond those wild assertions, petitioners do not point specifically to the record in support of their thesis, only relying upon the tone of McElroy's counsel in opening and closing. All such references to McElroy's counsel's remarks have been taken out of context. Second, none rises to the level of any constitutional issue before this Court. Third, if the remarks themselves were objectionable, they could have been objected to during the time of trial; and they never were. Fourth, the jury is particularly instructed that the arguments of counsel do not represent evidence and are not to be regarded as such and only used by them in aid of interpreting the evidence. The Trial Judge's specific admonition was:

> "You should consider carefully the arguments of counsel insofar as such arguments are based upon the evidence and insofar as such arguments will assist you in arriving at a just verdict. But the arguments and statements of counsel and their conclusions and opinions are not to be considered by you as evidence in this case. It is your duty to draw your own conclusions and your own inferences from the evidence and to decide upon your verdict according to the evidence and under the instructions concerning the law as given to you by the Court."

Finally, this matter has been reviewed enough and remains what it started as, a unique factual situation dealing with a claim of undue influence, unrelated to any assertion by McElroy that doctrine caused him to make the

deed. What caused McElroy to make the deed was all the communication between November and December of 1969 by Attorney Helge leading McElroy to believe that Helge was his attorney, causing him to conclude that the Declaration of Trust would be like a Will, causing him to believe that he would have the opportunity for an income tax advantage and at the same time have a Will substitute. The remainder interest concept is a complicated tool even to the typical lawyer and mind boggling to a poor, old dairy farmer who did not even know what "probate" meant.

These First-Amendment claims have been aired by petitioners previously. Summary judgment was attempted by petitioners and failed. That issue was appealed to the Court of Appeals before the actual trial of the matter but denied. After trial in Motions After Verdict, petitioners again raised the issue of the First Amendment. That attack failed. On appeal to the Court of Appeals, petitioners relied heavily upon the First Amendment; and that issue was thoroughly and completely briefed before that Court. The Court of Appeals concluded that the First Amendment really was not an issue here; rather, it was a simple case on relatively straightforward facts dealing with an issue in the common law of Wisconsin; namely, undue influence. Doctrinal attack, religious indoctrination, zeal and fervor are sought to be introduced by the petitioners for the simple reason of attempting to upset the jury verdict, with petitioners realizing they can mount no challenge against it on a factual or evidentiary basis. After review by the Court of Appeals, petitioners sought review by the Wisconsin Supreme Court, again on First Amendment grounds. That petition was rejected.

## CONCLUSION

Not one of the appellate reviews in this matter has been published. None of the opinions below carry any precedential value. This case represents a long and ugly effort by petitioners to introduce the First Amendment into a case where it has no place.

Therefore, it is respectfully prayed that the Petition for Certiorari be denied and that petitioners' war of attrition against a poor and old George McElroy be ended. For the evidence at trial clearly and convincingly established that McElroy was completely susceptible to an undue influence, that petitioners had the opportunity and were disposed to take advantage of a person like McElroy, and the coveted result of the remainder interest in the property was completely consistent with petitioners' course of conduct which was calculated to fleece George Daniel McElroy's flock.

Respectfully submitted,

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# APPENDIX

## APPENDIX A

COURT OF APPEALS DECISION
Dated and Released December 16, 1980

STATE OF WISCONSIN

IN THE COURT OF APPEALS — DISTRICT III

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No. 80-283

---

GEORGE DANIEL McELROY,

Plaintiff-Respondent,

v.

AMBASSADOR COLLEGE, WORLDWIDE CHURCH OF GOD, and the WORLD TOMORROW, a California Corporation,

Defendants-Appellants.

---

APPEAL from a judgment of the circuit court for Barron county: FRED VAN SICKLE, Judge. *Affirmed.*

Before Donlin, P.J., Foley, J., and Dean, J.

PER CURIAM. The judgment appealed from declared null and void a Deed Reserving Life Estate in which McElroy donated his farm to the respondents (the Church). The judgment was based upon a jury verdict finding that the deed was the product of undue influence. The church appeals from the judgment arguing that insufficient evidence was adduced on each of the four elements of undue influence: susceptibility, opportunity, disposition and coveted result. *In re Estate of Fechter,* 88 Wis.2d 199, 214, 277 N.W.2d 143, 150 (1979).

Undue influence must be proved by clear, satisfactory, and convincing evidence. When three of the four elements have been established by the required quantum of proof, only slight evidence of the fourth is required. *First Nat. Bank of Appleton* v. *Nennig*, 92 Wis.2d 518, 536, 285 N.W.2d 614, 623 (1979). On appeal, the findings of the jury will not be upset unless they are against the great weight and clear preponderance of the evidence. The court's task on appeal is to examine the record, not for facts to support a finding the trial court did not make or could have made, but for facts to support the finding the trial court did make. *In re Estate of Dejmal*, 95 Wis.2d 141, 154, 289 N.W.2d 813, 819 (1980). Upon our examination of the record in light of these principles, we conclude that sufficient evidence was adduced as to each element to sustain the finding of undue influence.

Susceptibility is established when it is proved that the donor was unusually receptive to suggestions of others and consistently deferred to them on matters of utmost personal importance. *Dejmal* at 156, 289 N.W.2d at 820. McElroy had a seventh grade education. He had recently been through a divorce which he described as a "shock." He stated that he was looking for meaning in life when he joined the church.

McElroy testified that based upon what the church had told him, he had reduced his milking herd from thirty to twelve cows. He believed that he would be cursed if he disobeyed God, and that he had to give all to enter the Kingdom of God. He believed that the world would end in 1972, and followed the church's instructions so that he could be led to a place of safety during the holocaust.

McElroy signed a will modeled after a sample sent to him by the church. This will named as executors people McElroy did not know. Later, in order to avoid probate, McElroy donated his farm by deed that was prepared by

the church. McElroy testified that he did not know what "probate" meant at that time. He was also confused by the literature sent to him by the church and believed he could revoke the deed if he wished. He testified that he was "blinded with programming" by the literature sent by the church. From this testimony, and the jury's observations of McElroy, the jury could properly conclude that he was susceptible to undue influence.

A reasonable jury might also have concluded that the church had ample opportunity to influence McElroy to donate his farm. Although most of this opportunity did not involve personal contact, the jury could reasonably find that the letters, literature, sermons, and occasional personal contact gave the church adequate opportunity to exert its will over McElroy. The church had advised McElroy to avoid contact with persons outside the church. Shorty before the will was signed, McElroy received numerous letters from the church, sometimes two or three in one day. McElroy testified that in making his will, he received all of his information from the church. In light of McElroy's relative isolation from other points of view and the volume of correspondence the church sent McElroy, sufficient evidence was adduced to allow the jury to conclude that the church's contacts with McElroy gave it sufficient opportunity to substitute its judgment for his.

The disposition of the church to unduly influence McElroy was proved by the active and guiding part it played in securing the deed. *See Kuehn* v. *Kuehn,* 11 Wis.2d 15, 22, 104 N.W.2d 138, 143 (1960). The initial suggestion to will the farm to the church was by Mr. Armstrong in a sermon. The church then sent McElroy a sample will, which he followed in all material respects. The church arranged a codicil to the will and, eventually, the deed reserving life estate. The church instructed McElroy not to seek assistance outside the church. Sufficient evidence of

the church's aggressiveness in securing McElroy's property was presented to the jury to support its conclusion that the church was disposed to unduly influence McElroy.

The final element, coveted result, is also amply proved by the evidence. The test is not whether the result is natural or unnatural, but whether the result accomplished clearly appears to be the effect of the defendant's influence. *Kuehn* at 25, 104 N.W.2d at 144. The deed made the provisions of the will irrevocable. McElroy's testimony indicates that he did not understand the effect of what he had done, and stood to gain very little from the donation of his farm to the church. The decision to donate McElroy's farm by an irrevocable deed reserving life estate rather than leaving it to the church in his will was clearly the effect of the church's influence on him.

As stated in *Kuehn* at 24-25, 104 N.W.2d at 144:

> The acts of influence may be as varied as human conduct. Influence becomes undue when it commands or compels the exercise of volition on the part of the person subject to such influence so that the result is the accomplishment of the will or purpose of the one using influence rather than, in fact, the will or purpose of the donor. The nature of the influence is in the form of mental persuasion or compulsion but not necessarily fear, which is the element of duress. The degree of persuasion which is unfair depends on a variety of circumstances. Both permissible influence and undue influence may induce a transaction. The distinction is whether the result was produced by influencing a freely exercised and competent judgment or by dominating the mind or emotions of the person susceptible to the influence.

McElroy's testimony was sufficient to allow a reasonable jury to find by clear, satisfactory, and convincing evidence that the deed was the product of undue influence by the church.

The church also argues on appeal that its first amendment rights were violated in this case. The judgment relates solely to the undue influence exercised by the church over McElroy. The church, in common with every other person or organization, is subject to the laws relating to undue influence. There is no exemption for a religious institution to acquire property through undue influence. Likewise, the fact that one of the methods of compulsion, persuasion, or domination of the donor's mind consisted of religious indoctrination does not exempt a donee from the doctrine of undue influence. We conclude that no valid first amendment issue can be raised from this judgment.

*By the Court.*—Judgment affirmed.

**APPENDIX B**

Rt 2
Barron, WI 54812
February 8, 1973

Mr. Ralph Helge, Attorney
At Law
205 West Green St.
Pasadena, CA 91105

Dear Mr. Helge:

This will acknowledge receipt of the instrument requested by my son, Howard McElroy. Thank you for forwarding this to me.

Since I am no longer affiliated with the Worldwide Church of God I hereby request that the agreement transferring my property to the church upon my death be cancelled.

Please return all appropriate documents covering this transaction to me at the above address. If any of these instruments have been recorded in any municipal district please advise in which district they were recorded, and the date on which subsequent cancellation was recorded in each district.

Your cooperation in this matter will be appreciated.

Yours truly,
George Mc Elroy